

## State Appellate Court Considers if School Board Violated Open Meetings Act

Article By:

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The Fall 2015 edition of *A Lesson Learned* included a story about a school board accused of violating the Open Meetings Act when the Board voted to approve a superintendent's separation agreement.

The superintendent and the Board compiled a 19-page "Separation Agreement and Release" setting forth compensation, healthcare coverage, and the parties' obligations regarding the superintendent's resignation.

During a closed meeting, Board members signed the separation agreement, but did not date it. The Board published an agenda listing the separation agreement as a topic of discussion and posted the entire agreement on the Board's website four days prior to the public meeting.

At the public meeting, the Board approved the agreement by a six-to-one vote and added the date of their previous signatures. A news reporter, who was present at the public meeting, filed a request for review with the Public Access Counselor because she believed the Board violated the Open Meetings Act when it signed the agreement before taking a public vote.

The Attorney General issued a Public Access Opinion holding that the Board violated the Act. An Illinois circuit court disagreed and held that posting the separation agreement on the Board's website and briefly discussing it at the public meeting satisfied the Act's requirements.

The Attorney General appealed the circuit court's decision to the Illinois Appellate Court, Fourth District and argued the Board failed to comply with the Open Meetings Act when Board members signed the agreement during a closed session. *Bd. of Educ. of Springfield School Dist. No. 186 v. Attorney General of Illinois*, 2015 IL App (4th) 140941.

The appellate court reviewed the pertinent sections of the Open Meetings Act and found that the Act provides for numerous exceptions that permit closed sessions. One such exception is for the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body." 5 ILCS 120/2(c)(1). The superintendent's resignation and separation agreement fit squarely within the parameters of that exception.

While a number of issues can be discussed in private, no final action can be taken at a closed

meeting. The Open Meetings Act provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." 5 ILCS 120/2(e). The appellate court held that the act of signing the agreement during a closed session did not constitute a "final action."

Next, the court considered if the Board gave the public adequate information about the agreement during the public session. The Act requires school boards to advise the public about the general nature of what action will be taken, but it does not require a board to provide a detailed explanation about the significance or impact of the decision.

During the public meeting itself, the Board's president introduced the separation agreement and recommended that the Board approve it. Although the discussion of the agreement at the public meeting was brief, the court noted that the Board's online agenda included a link to the agreement. By clicking on the link, the public could view, download, and read the entire agreement prior to the Board meeting. As a result, the appellate court upheld the circuit court's decision finding that the Board did not violate the Open Meetings Act by signing the separation agreement in a closed session.

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National Law Review, Volume VI, Number 149

Source URL: <https://natlawreview.com/article/state-appellate-court-considers-if-school-board-violated-open-meetings-act>